



# Environmental Fact Sheet

## **EPA Determines that Ash from Waste-To-Energy Facilities Is Subject to Hazardous Waste Regulations Upon Exiting the Combustion Building**

### **Background**

On May 2, 1994, the U.S. Supreme Court issued an opinion interpreting Section 3001(i) of the Resource Conservation and Recovery Act (RCRA). The Court held that, although municipal waste-to-energy (WTE) facilities that burn household wastes alone, or in combination with nonhazardous wastes from industrial and commercial sources, are exempt from regulation as hazardous waste treatment, storage, or disposal facilities, the ash that they generate is not exempt.

Generally, two basic types of ash are collected at WTE facilities: bottom ash from the furnace and fly ash from the air pollution control equipment. EPA estimates that nearly 80 percent of WTE facilities routinely combine the bottom ash and fly ash. Bottom ash is approximately 75-80 percent of the total ash by weight. Studies show that ash (usually fly ash) sometimes can be classified as hazardous waste because it can leach lead or cadmium above levels of concern.

WTE facilities must determine if the ash they generate is hazardous. This determination can be made by either testing or by using knowledge of the combustion process to understand whether the ash would be hazardous. The Court ruling did not specify when or where this determination had to be made.

### **Action**

Because the Court did not specify where a hazardous waste determination should be made, EPA is designating this point. EPA interprets Section 3001(i) of RCRA to first subject the ash generated by a WTE facility to hazardous waste regulations when it exits the combustion building following the combustion and air pollution control processes. This means that owners and operators of WTE facilities may combine bottom ash and fly ash inside the combustion building before making a hazardous waste determination. This action is a

statutory interpretation, and does not change the Supreme Court decision.

Ash that is a hazardous waste must be managed in full compliance with RCRA hazardous waste management rules. The Agency will vigorously enforce against violations under RCRA. Landfilling of nonhazardous ash must occur in a facility that meets stringent federal design and operating standards, which are fully protective of human health and the environment.

## **Contact**

For additional information or to order a copy of the *Federal Register* notice, contact the RCRA Hotline, Monday-Friday, 8:30 a.m. to 7:30 p.m. EST. The national, toll-free number is (800) 424-9346; TDD (800) 553-7672 (hearing impaired).

Copies of documents applicable to this rule may be obtained by writing: RCRA Information Center (RIC), U.S. Environmental Protection Agency, Office of Solid Waste (5305), 401 M Street SW, Washington, D.C. 20460.